95-1692

No.

Supreme Court, U.S.
FILED
APR 19 1996
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In The

Supreme Court of the United States

October Term, 1995

JOHN SHAW,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

1. Whether petitioner's conviction for accepting campaign contributions violates defendant's rights to free speech, free assembly, due process and equal protection.

2. Whether petitioner's conviction is supported by sufficient evidence as to mail fraud, RICO, and the individual RICO acts underlying petitioner's RICO conviction.

A. Count 1, RICO generally: there was insufficient continuity or relation between the racketeering acts found by the jury to support a RICO conviction.

B. The individual racketeering acts of petitioner's conviction are not supported by sufficient evidence to constitute the underlying crimes charged.

PARTIES TO THE PROCEEDINGS BELOW

1. John Shaw
2. Anthony LaSalle
3. Charles Gabrick
4. United States of America

TABLE OF CONTENTS

	Page
Question Presented for Review	i
Parties to the Proceedings Below	ii
Table of Contents	iii
Table of Citations	iv
Statement of the Case	1
Reasons for Granting the Writ	8
I. Whether petitioner's conviction for accepting campaign contributions violates petitioner's rights to free speech, free assembly, due process and equal protection.	8
II. Whether petitioner's conviction is supported by sufficient evidence as to mail fraud, RICO, and the individual RICO acts underlying petitioner's RICO conviction.	10
A. Whether Petitioner's Convictions for Mail Fraud, and Commercial Bribery Support Petitioner's RICO Conviction Where There Is Insufficient Evidence to Establish a Pattern of Racketeering Activity.	10
B. The Individual Racketeering Acts of Petitioner's Conviction Are Not Supported by Sufficient Evidence to Constitute the Underlying Crimes Charged.	13

Contents

Page

1. Count 1, Racketeering Act 28: $1,300 Check from Bell of PA 13

2. Count 1, Racketeering Acts 67 and 80: Campaign Contributions 14

3. Count 1, Racketeering Act 81, and Count 6: Mail Fraud Concerning Donald Finnegan . 16

Conclusion 17

TABLE OF CITATIONS

Cases Cited:

Brown v. Hartlage, 456 U.S. 451, 102 S. Ct. 1423, 71 L. Ed. 2d 732 (1982) 9

Buckley v. Valeo, 424 U.S. 1 (1976) 9

H.J. Inc. v. Northwestern Bell, 492 U.S. 229, 109 S. Ct. 2893 (1989) 11, 13

Religious Technology Center v. Wollersheim, 971 F.2d 364 (9th Cir. 1992) 12, 13

Tabas v. Tabas, 47 F.3d 1280 (3d Cir. 1994) 12, 13

Thomas v. Collins, 323 U.S. 516 (1945) 9

United States v. Indelicato, 865 F.2d 1370 (2nd Cir. 1989), *cert. denied*, 109 S. Ct. 3192 12

Contents

Page

United States v. Sladowsky, 457 U.S. 102 (1982) 9

Statutes Cited:

18 Pa. C.S.A. § 4108 8

18 Pa. C.S.A. § 4108(a) 6, 13, 14

18 U.S.C. § 1341 ..... 6, 16

18 U.S.C. § 1510 6

18 U.S.C. § 1961(5) 11, 12

18 U.S.C. § 1962 6

United States Constitution Cited:

First Amendment 9, 10

Rules Cited:

Supreme Court Rule 10.1(a) 8, 11, 13

Supreme Court Rule 10.1(c) 8

Other Authority Cited:

116 Cong. Rec. 18940 (1970) 11

Contents

Page

APPENDIX

Appendix A — Judgment of the United States Court of Appeals for the Third Circuit Dated January 30, 1996 ..... 1a

Appendix B — Judgment of the United States District Court, Eastern District of Pennsylvania Dated May 31, 1995 ..... 3a

Appendix C — Relevant Statutes 12a

STATEMENT OF THE CASE

In 1984, petitioner first ran for president of the Fraternal Order of Police, Lodge 5 (hereinafter "Lodge 5"), financing his campaign with personal savings. He lost that election to an incumbent whose campaign was funded by a law firm. The law firm was subsequently selected as the provider of legal services to the membership of Lodge 5. (*See* N.T. 2/8/95 pp. 137 - 138). At the next election, in 1986, petitioner again ran for president of Lodge 5 using personal savings. He again lost to an opponent whose campaign was funded by an attorney who was subsequently awarded the legal services plan to provide legal services to members of Lodge 5.

Before the 1988 Lodge 5 elections, petitioner met with Bernard Sacks. Mr. Sacks was a successful Philadelphia attorney who petitioner knew to be on the board of directors of Continental Bank, as well as on the ethics board of the Philadelphia Bar Association. At this meeting, Sacks assured petitioner that he would be able to offer the membership of Lodge 5 legal services envisioned by petitioner and offered to support petitioner's candidacy for Lodge 5 president. Despite support from Sacks, however, petitioner's campaign was unsuccessful.

For the 1990 Lodge 5 election, petitioner was again contacted by Mr. Sacks who was interested in funding the 1990 campaign. Mr. Sacks agreed to finance petitioner's campaign, on condition that Sacks was to be the campaign manager, in charge of all strategy decisions and funding. Petitioner agreed and the 1990 campaign commenced.

As part of his election campaign, petitioner promised the Lodge 5 membership that he would secure substantial increases in the level of legal services provided to the members. Numerous campaign posters were distributed describing Bernard Sacks as

well as other attorneys in his firm as those petitioner would seek to have provide legal services to the membership. Bernard Sacks himself appeared at police roll calls to answer any questions posed by Lodge 5 members regarding the potential legal service plan which could be available to members should he be selected to provide legal services to the membership.

During the 1990 campaign, all campaign printing was provided by Strassheim printing. Strassheim had provided services to the petitioner in at least three past elections, and was paid each time by the petitioner from petitioner's personal savings.

Petitioner won the 1990 election, and was installed as president of Lodge 5. Fulfilling his promise to the members, during the first Lodge 5 membership meeting, petitioner announced his recommendation that the firm of Sacks Basch Weston and Sacks be retained to provide legal services for the membership of Lodge 5. Petitioner's motion was passed unanimously by the membership. At a later meeting of the Trustees of the Lodge 5 legal services plan, the trustees voted to hire the Sacks' firm to provide legal services to the Lodge 5 membership.[1] The legal services plan was implemented using funds approved by the trustees of the Lodge 5 legal services trust, since the president of the Lodge is not authorized to approve such funding. Pursuant to petitioner's campaign promise, legal services were expanded to provide greater availability of attorneys, increase the number of attorneys and offices, and expand hours of operation.

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1. Petitioner was not a member of this board of trustees and was not present when the vote to hire the Sacks firm was taken. Nor was petitioner present when the retainer for the legal services plan was decided. No evidence was presented at trial that petitioner exercised undue influence on any trustee to approve the award of the legal services plan.

One of the people also elected to Lodge 5 positions was Donald Finnegan. In this position, Finnegan volunteered to help run the Lodge bar. He was also appointed by the trustees of the Lodge 5 Dental, Optical, and Prescription plan (D.O.P.) as an Assistant Administrator. As such, he received a salary from the D.O.P. and reported to the Administrator, Anthony LaSalle.

In January of 1991, the Lodge 5 accountant, Steven Lewis, brought to the petitioner's attention that Mr. Finnegan may not be working sufficient hours for the D.O.P. to justify his salary being paid by that organization. Petitioner immediately instructed Lewis to do whatever was necessary to cure the problem. Mr. Lewis explained that his solution was to "back out" Finnegan's salary from the D.O.P. budget:[2]

> By Mr. Stein:
>
> Q: Now, did you have a discussion at a later time concerning Donald Finnegan with anybody at the dental optical and prescription plan?
>
> By Mr. Lewis:
>
> A: Yes, I did.
>
> Q: Who?

---

2. The DOP, as the administrators of benefits provided by the city, was funded by the city. The funding process, however, was indirect: Lodge 5 funded the DOP operations, and was then reimbursed by the city. Lodge 5 would send periodic reports of the DOP's operating expenses to the city, which would then reimburse Lodge 5. The "backing out" of Finnegan's salary was accomplished by subtracting the cost of Finnegan's salary and benefits from the DOP expense reports which were sent to the city. The result was that Finnegan's salary was funded through Lodge 5 funds, not with city funds.

A: I talked to Rosemary Napier on several occasions about it, I also talked to Anthony LaSalle and Charlie Gabrick.

Q: And what did you say to them?

A: After a time it became apparent to me that Donald Finnegan was not working 100 percent of his time for the D.O.P. So I discussed the matter with Tony and Charlie and indicated my concerns in this respect.

* * *

Q: Can you estimate when those conversations took place?

A: Not with real certainty, no. I mean, I would estimate somewhere between probably April or May of '91 through December '91.

Q: And as a result of those discussions, was any action taken with respect to Donald Finnegan's D.O.P. salary?

* * *

A: I talked to Tony LaSalle and decided that — we essentially decided that since the Lodge billed an administrative fee to the D.O.P. and that since that administrative fee was going to go up substantially because of the increased salaries being paid at the Lodge, that we could use an accounting

method to essentially back-out Donald Finnegan's salary.

* * *

By the Court:

Q: What do you mean backs-out? Explain that, please.

A: Well, essentially what it means is that what we had done is we offset Donald Finnegan's salary that was being paid by the D.O.P. by reducing the administrative fee that the Lodge was charging to the D.O.P.. So in essence what we were doing is shifting Donald Finnegan's salary from the D.O.P. over to the Lodge.

* * *

By Mr. Stein:

Q: And, did John Shaw at any time tell you, don't do that?

A: No. In fact, he was made aware that we were going to do this and he consented.

(R. A-1488-1495).

In 1992, petitioner ran for reelection as president of Lodge 5. The campaign was run under the same conditions as before: Bernard Sacks ran the campaign, and Strassheim Printing, which had provided printing for all of petitioner's prior campaigns, and had already been providing printing services to Lodge 5, did all

the printing of posters, etc. for the campaign. Petitioner ran on the same issues as the 1990 campaign, advocating a high level of service to the members, and advertising the services provided by the Sacks Firm as the prime example of petitioner's achievement of that goal. This campaign resulted in petitioner's reelection.

On August 30, 1994, petitioner was charged in a 26 count Indictment. Also named in the Indictment were co-defendants Anthony LaSalle and Charles Gabrick. Petitioner was charged with racketeering in violation of 18 U.S.C. § 1962, Obstruction of Justice, in violation of 18 U.S.C. § 1510, and six counts of Mail Fraud in violation of 18 U.S.C. § 1341. The RICO count of the Indictment included 64 alleged racketeering acts. These included numerous allegations of Commercial Bribery, in violation of 18 Pa. C.S.A. § 4108(a). The alleged Commercial Bribery Acts consisted of alleged cash payments from Bernard Sacks to petitioner for the period between petitioner's initial election and 1992, the funding of petitioner's 1992 reelection campaign for president of Lodge 5, the provision of printing services to petitioner's 1992 reelection campaign by Strassheim Printing, and the retention by petitioner of a $1,300 refund check from Bell of Pennsylvania for a telephone line deposit paid during the 1992 reelection campaign. They also included allegations of bribes paid to petitioner by Michael Borkowski, who provided insurance services to Lodge 5 members.

Another group of alleged Racketeering Acts included several allegations of Mail Fraud. These allegations concerned mailings to Lodge 5 members giving information about insurance services provided by Borkowski, and letters sent from the administrator of the D.O.P. requesting reimbursement of operating expenses from the City of Philadelphia. The latter allegations accused petitioner and his co-defendants of defrauding the city of the salary paid to Donald Finnegan, who was paid on the D.O.P. payroll, but was alleged to have done no work for the D.O.P.

The last category of Racketeering Act concerned Obstruction of Justice, concerned an allegation that petitioner ordered William Strassheim, the manager of Strassheim Printing, to lie to federal authorities and to falsify records concerning the payment for printing services performed during petitioner's 1992 reelection campaign.

Petitioner was tried by jury before the Honorable James T. Giles in the United States District Court for the Eastern District of Pennsylvania. Trial commenced on January 30, 1995. At the close of the prosecution's case, and at the close of testimony, petitioner moved for judgment of acquittal. These motions resulted in the dismissal of Counts 2 through 10, 12 through 17, 19, 20, 22, and 23 of the Indictment, and the dismissal of Racketeering Acts 77-81, 83, 85, and 86 of Count One.

On February 17, 1995, the jury returned a verdict of guilty as to Count One and Six, charging RICO and Mail Fraud. As to the RICO Count, the jury specifically found petitioner guilty of only four of the alleged Acts. These were: No. 28 (accepting the $1,315 Bell of Pennsylvania line deposit refund check); No. 67 and 80 (accepting campaign contributions from Bernard Sacks and Strassheim Printing to fund petitioner's 1992 reelection campaign); and 81 (mail fraud concerning the D.O.P. administrator's letter requesting reimbursement from the City of Philadelphia for D.O.P. operating expenses for a period for which Donald Finnegan was paid on the D.O.P. payroll, but his salary was not backed out of the D.O.P. budget).

A post-verdict motion for Judgment of Acquittal was filed by petitioner, and denied by the District Court on April 5, 1995. On May 24, 1995, petitioner was sentenced to 4.7 years in prison, and forfeiture as found by the jury, in the amount of $40,140.

Timely Notice of Appeal was filed with the United States Court of Appeals for the Third Circuit. In that appeal, petitioner

raised the two issues presented to the court in the instant petition. On January 23, 1996, the court affirmed the judgment of the District Court without opinion.

REASONS FOR GRANTING THE WRIT

I.

WHETHER PETITIONER'S CONVICTION FOR ACCEPTING CAMPAIGN CONTRIBUTIONS VIOLATES PETITIONER'S RIGHTS TO FREE SPEECH, FREE ASSEMBLY, DUE PROCESS AND EQUAL PROTECTION.

Review is sought pursuant to Supreme Court Rule 10.1(c), which states that certiorari review may be appropriate: "when a state court or a United States Court of Appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decisions of this Court." Sup. Ct. R. 10.1 (c).

In the instant case, petitioner was convicted of predicate acts under the Pennsylvania Commercial Bribery Statute, 18 Pa. C.S.A. § 4108 commercial bribery with respect to Racketeering Acts 28, 67 and 80 of Count One of the instant Indictment. Acts 67 and 80 describe the acceptance of money and services as donations to petitioner's campaign to run for the office of President of the Fraternal Order of Police, Lodge 5 [hereinafter "Lodge 5"]. Racketeering Act 67 cites money contributions to petitioner's 1992 campaign for reelection as President of the FOP, given by Bernard Sacks. Act 80 describes the donation of free printing services by Strassheim Printing.

It is important to note that petitioner did not only run for election in 1992. The Indictment in this case states that petitioner engaged in the exact same behavior concerning his campaign

funding during his unsuccessful 1988 campaign, and his successful 1990 campaign. The Government, however, did not cite the 1988 and 1990 campaign contributions as bribes because petitioner was not a fiduciary of the organization at the time the funds were accepted.

In the past, this Court has held that union by-laws banning the acceptance of outside money in a union election were a legitimate regulation, and not a violation of free speech. *See, e.g., United States v. Sladowsky,* 457 U.S. 102 (1982). In its decision, however, the Court did not state that the First Amendment did not apply to union or union-like activity. It merely held that the union could impose reasonable regulations on its own members, and that federal law governing the union was not unconstitutional for allowing such a regulation.

In the instant case, the FOP is not a union, but a fraternal organization, which operates as a the collective bargaining unit for law enforcement personnel. As such, federal labor laws do not apply to its operations. Moreover, the FOP itself did not have any by-laws or regulations restricting sources of funding for candidates in its election campaigns. The holding in *Sladowsky,* therefore, does not apply to the instant case.

This Court has held that in the context of general political elections, the First Amendment requires that the government narrowly tailor its regulations to fulfill only compelling government interests. *Brown v. Hartlage,* 456 U.S. 451, 102 S. Ct. 1423, 71 L. Ed. 2d 732 (1982). The protection of the First Amendment has been extended to contributions to and expenditures from campaign funds in a general political election. *See Buckley v. Valeo,* 424 U.S. 1 (1976). In addition, union activity, such as promotion of a union, was also held to be protected by the First Amendment. *See Thomas v. Collins,* 323 U.S. 516 (1945) (this Court struck down a Texas statute requiring union promoters to register with the state. The Court held that the

right to discuss and inform people concerning the advantages and disadvantages of unions is protected not only as part of free speech, but also as a part of free assembly).

The question presented by the instant case, although involving certain elements of the above cases, presents a novel issue. It first asks whether funding of a union or quasi-union election campaign is subject to protection under the First Amendment. If so, it then asks whether the Pennsylvania Commercial Bribery Statute is so narrowly tailored as to serve a compelling government interest that it may be applied to campaign fundraising in a quasi-union election without infringing upon the First Amendment protections of the candidates and the voting members of the organization. Finally, it raises the question of whether the application of the commercial bribery statute only to an incumbent seeking re-election is a violation of petitioner's right to equal protection of the law, and infringed petitioner's rights to free speech and assembly. For these reasons, this case is appropriate for the grant of a writ of certiorari.

II.

WHETHER PETITIONER'S CONVICTION IS SUPPORTED BY SUFFICIENT EVIDENCE AS TO MAIL FRAUD, RICO, AND THE INDIVIDUAL RICO ACTS UNDERLYING PETITIONER'S RICO CONVICTION.

A. Whether Petitioner's Convictions for Mail Fraud, and Commercial Bribery Support Petitioner's RICO Conviction Where There Is Insufficient Evidence to Establish a Pattern of Racketeering Activity.

Review of this issue is sought pursuant to Supreme Court Rule 10.1(a), which states that certiorari review may be

appropriate when a United States Court of Appeals has: "rendered a decision in conflict with the decision of another United States court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision." Sup. Ct. R. 10.1(a).

In *H.J. Inc. v. Northwestern Bell*, 492 U.S. 229, 109 S. Ct. 2893 (1989), customers of Northwestern Bell filed suit charging Bell with making cash payments to members of the Minnesota Public Utilities Commission (MPUC) in order to influence usage rates set by the Commission. The petitioners raised four separate claims based on allegations that during a six year period, Northwestern Bell made cash and other payments to MPUC members to influence members to approve rates which were in excess of fair and reasonable amounts.

Upon review, this Court discussed at length the requirement of a pattern of racketeering activity, observing that 18 U.S.C. § 1961(5) concerns only the minimum number of predicates necessary to establish a pattern, and assumes that there is something to a RICO pattern beyond simply the number of predicate acts involved. This Court recalled that the principle sponsor of the Senate bill expressly indicated that "proof of two acts of racketeering activity, without more, does not establish a pattern." *Id.* at 2900, quoting Sen. McClellan 116 Cong. Rec. 18940 (1970). In other words: "the mere fact that there are a number of predicates is no guarantee that they fall into any arrangement or order. " *H.J.*, at 2900. The Court affirmed the judgment against Bell holding that bribes, although given out over a long period, had only one aim: the approval of unfair and unreasonable rates for Northwestern Bell.

This topic has also been addressed in the Court of Appeals, which has generally agreed that the elements of relatedness can be shown by: closeness in time; common goals; similarity of methods; or number of repetitions. *See Tabas v. Tabas*, 47 F.3d 1280 (3d Cir. 1994); *United States v. Indelicato*, 865 F.2d 1370 (2nd Cir. 1989), *cert. denied*, 109 S. Ct. 3192; *Religious Technology Center v. Wollersheim*, 971 F.2d 364 (9th Cir. 1992). It is also generally agreed that the issue of relatedness is fact-intensive, and should be decided on a case-by-case basis. *See, e.g., Tabas, supra.*

In the instant case, petitioner asserts that the disparities of time, place, purpose and person involved in the various acts for which he was convicted of a RICO offense are too disparate to constitute a RICO offense. His conviction based on these disparate predicate acts stretches beyond that anticipated scope of 18 U.S.C. § 1961(5) as interpreted by all the courts that have passed on the matter. Petitioner therefore asks this Court to exercise its power of supervision to review his conviction.

With respect to Racketeering Acts 67 and 80, petitioner asserts that these are unrelated to the other acts of conviction. These specifically concern petitioner's reelection campaign. As such, they have a very specific goal which is not related to any other Racketeering Act. Unlike Act 28, these funds did not benefit petitioner directly, but were spent exclusively on campaign expenses. The method used was also completely different. Campaign expenses of Act 67 were allegedly paid directly by Bernard Sacks to the respective vendors. Similarly, Strassheim Printing allegedly provided support by not charging for printing work performed for the campaign. In contrast, Act 28 alleges a payment of a line refund which occurred only after the election was over, and was paid directly to petitioner. The alleged goal of Act 81 was to benefit Donald Finnegan and the FOP by

providing him with a salary paid by the City and not the FOP[3] This was allegedly done by fraudulently placing him on the D.O.P. payroll when he did no work for the D.O.P. Petitioner asserts that these facts do not adhere to the legal standards set forth in *Wollersheim. Tabas*, or *H.J. supra.* For this reason, petitioner asks for review by this Court to determine the appropriate extent of the RICO relatedness standard.

B. The Individual Racketeering Acts of Petitioner's Conviction Are Not Supported by Sufficient Evidence to Constitute the Underlying Crimes Charged.

Review of this issue is sought pursuant to Supreme Court Rule 10.l(a), which states that certiorari review may be appropriate when a United States Court of Appeals: ". . . has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision." Sup. Ct. R. 10.l(a). Specifically, petitioner asserts that there is insufficient evidence to sustain the convictions against him, and that, taking all evidence in the light most favorable to the government, the denial of petitioner's sufficiency of the evidence challenge is a severe departure from the accepted course of judicial proceedings, requiring this Court's intervention.

1. *Count 1, Racketeering Act 28: $1,300 Check from Bell of PA*

In order to sustain a conviction under 18 Pa. C.S.A.

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3. The City of Philadelphia, at the time, provided funding to support the D.O.P. The result of Finnegan ending up on the D.O.P. payroll was that his salary came out of City funds. Since Finnegan was not spending 100% of his time on D.O.P. related activities, he was removed from the D.O.P. payroll and placed on the FOP payroll.

§ 4108(a), the Pennsylvania Commercial Bribery Statute, the government had to establish that: (1) petitioner was an employee, agent, or fiduciary of an organization; (2) that he accepted something of value with the understanding that it would affect his judgment with respect to petitioner's employment; and (3) that he did so without the consent of his employer or principal.

With respect to petitioner's conviction for accepting a $1,300 Bell of PA refund, viewed in the light most favorable to the government, the refund check was made payable to petitioner, and both the check and stub attached to it were mailed to petitioner's residence. This was not done by any party to the election, but by Bell of PA. It can only be concluded, therefore, that the check was sent by Bell of PA to petitioner's home. The petitioner subsequently cashed the check. Concerning the surrounding circumstances, the jury specifically found that as to all of the racketeering acts which involved the payment of cash bribes from Bernard Sacks to petitioner, there was not enough credible evidence to find beyond a reasonable doubt that those bribes were paid. In addition, concerning the petitioner's "consciousness of guilt," during each of petitioner's campaigns he actively publicized and advertised his relationship with Sacks, proclaiming it to the membership as a part of his election platform.

Based on the above facts, petitioner asserts that there is a substantial question as to whether there is sufficient evidence to convict petitioner on this Count. The fact that both lower courts upheld petitioner's conviction is a deviation from the normal course of judicial proceedings warranting review by this Court.

2. *Count 1, Racketeering Acts 67 and 80: Campaign Contributions*

Racketeering Acts 67 and 80 of the instant Indictment were

described in the Indictment, and presented in testimony as campaign funding expended by Bernard Sacks and Strassheim Printing in support of petitioner's bid for re-election as president of Lodge 5. The government was required to prove that these funds were accepted by petitioner for his benefit, without the knowledge or consent of the members of Lodge 5, and in return for promises services in his capacity as an employee, fiduciary, or agent of Lodge 5.

The evidence submitted on these charges showed that all funds expended or donated for petitioner's campaign were expended on campaign expenses only. No evidence was offered to show that petitioner received any for these funds for personal use. The evidence also showed that there was an entire slate of candidates for elected Lodge 5 positions, and that the funds were expended for the benefit of all these candidates. Concerning the knowledge or consent of the Lodge 5 membership, the evidence showed that petitioner widely advertised his relationship with Bernard Sacks, and his desire to have the Sacks firm provide legal services to the membership of Lodge 5. It was shown to be a major element of petitioner's campaign platform.

Concerning printing services from Strassheim Printing, the evidence at trial revealed a record of arms-length transactions for the entire course of dealings between Lodge 5 and Strassheim Printing while petitioner was President of Lodge 5. In fact, Strassheim, the main government witness on this charge, testified that the only time he received an excessive payment from Lodge 5 was from a fraudulent bill that he submitted himself, without the knowledge of petitioner or anyone else at Lodge 5.

Based on the above facts, petitioner asserts that there is a substantial question as to whether there is sufficient evidence to convict petitioner on this Count. The fact that both lower Courts

upheld petitioner's conviction is a deviation from the normal course of judicial proceedings warranting review by this Court.

Finally, the evidence raises a related issue. In the instant case, petitioner was not prosecuted pursuant to any election law, but for Commercial Bribery, which requires that a defendant accept payments or things of value in **his position as an employee or fiduciary.** As already noted, the evidence in the instant case showed only that petitioner accepted things of value for his campaign, **in his position as candidate.** In this situation, where loss of the election means loss of the position wherein one is an employee or fiduciary, there is a substantial question as to whether petitioner can be held to have accepted the campaign funding as an employee or fiduciary.

3. *Count 1, Racketeering Act 81, and Count 6: Mail Fraud Concerning Donald Finnegan*

In order to find that petitioner was guilty of mail fraud, it must be shown that petitioner engaged in a scheme to defraud, in this case the City of Philadelphia, and that he did so knowingly. 18 U.S.C. § 1341. In the instant case, petitioner was accused of maintaining one Donald Finnegan on the payroll of the Lodge 5 Dental, Optical, and Prescription Trust (D.O.P.) where Mr. Finnegan did no work for the Trust. This was alleged to constitute mail fraud in that letters were sent to the City of Philadelphia for reimbursement of the trust's operating expenses. The government alleged therefore that petitioner caused the City of Philadelphia to pay Mr. Finnegan's salary by means of fraud.

The facts in support of this charge are mainly from Ted Wolkeiweicz and Rosemary Napier. Both admitted, however, that they had no knowledge of the extent of Mr. Finnegan's activities on behalf of the D.O.P. They established that he spent at least 20% of his workday on D.O.P. matters, and that he

worked at more than one D.O.P. location, spending significant time at a D.O.P. office where the witnesses called never saw Mr. Finnegan, and could not testify that he did nothing while there. The evidence also established that as soon as concerns about Mr. Finnegan's salary were brought to petitioner's attention, petitioner authorized bookkeeping adjustments to reimburse the D.O.P. for Mr. Finnegan's salary.

Based on the above facts, petitioner asserts that there is a substantial question as to whether there is sufficient evidence to convict petitioner on this Count. The fact that both lower courts upheld petitioner's conviction is a deviation from the normal course of judicial proceedings warranting review by this Court.

CONCLUSION

For the above-stated reasons, petitioner requests this Honorable Court to grant certiorari in this case.

Respectfully submitted,

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APPENDIX A — JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT DATED JANUARY 30, 1996

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 95-1447

UNITED STATES OF AMERICA

vs.

JOHN SHAW,

Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

(D.C. Criminal No. 94-00344-1)
District Judge: Honorable James T. Giles

Submitted under Third Circuit LAR 34.1(a)
January 23, 1996

BEFORE: MANSMANN, LEWIS, *Circuit Judges,*
and RESTANI*, *Judge,* Court of International Trade.

JUDGMENT ORDER

After consideration of all contentions raised by the appellant, to wit, that the court erred:

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* The Honorable Jane A. Restani, Judge, United States Court of International Trade, sitting by designation.

Appendix A

(1) in determining that appellant's conviction was supported by sufficient evidence as to the mail fraud and RICO convictions; and

(2) in upholding appellant's bribery convictions in violation of his First Amendment rights; it is

ADJUDGED AND ORDERED that the judgment of the district court entered on May 26, 1995, be and is hereby **AFFIRMED.**

BY THE COURT:

s/ Jim Lewis
Circuit Judge

Attest:

s/ P. Douglas Sisk
Clerk
Date: JAN 30 1996

Certified as a true copy and issued in lieu
of a formal mandate on February 21, 1996

Teste: s/ P. Douglas Sisk
Clerk, U.S. Court of Appeals for the Third Circuit.

APPENDIX B — JUDGMENT OF THE UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF PENNSYLVANIA DATED MAY 31, 1995

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)
Case Number: 2:94CR00344-1

Gerald Stein
Defendant's Attorney

UNITED STATES OF AMERICA

V.

JOHN SHAW

THE DEFENDANT:

[X] was found guilty on count(s) *1.21.25* **(see note on redacted count numbers)* after a plea of not guilty.

Title/Sect	Nature of Offense	Date Offense Concluded	Count Number(s)
18 USC § 1962(c)	racketeering	09/01/93	1
18 USC § 1341 § 2	mail fraud aiding and abetting	09/01/93	21
21 USC § 853	criminal forfeiture	09/01/93	25

Appendix B

The defendant is sentenced as provided in pages 1 through *5* of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

[X] Count(s) *2-20.22-24* (is) (are) dismissed on the motion of the United States

IT IS FURTHER ORDERED that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's Soc. Sec. No.: *166-34-0605*

Defendant's Date of Birth: *03/13/43*

Defendant's Mailing Address:

4540 CONVENT LANE
PHILA PA 19114

Defendant's Residence Address:
4540 CONVENT LANE
PHILA PA 19114

05/24/95
Date of Imposition of Judgment

s/ James T. Giles
Signature of Judicial Officer

JAMES T. GILES
JUDGE USDC EDPA
Name & Title of Judicial Officer

May 31, 1995
Date

Appendix B

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 57 months.

57 months on Count(s): 1 & 21

[X] The court makes the following recommendations to the Bureau of Prisons:

*A seperate order for criminal forfeiture will be entered. *To avoid possible jury bais during deliberations, Counts 21 & 25 wereredacted by agreement of all parties to reflect the following changes: Count 21 changed to Count 6; Count 25 changed to Count 8;*

* * *

[X] The defendant shall surrender for service of sentence at the institution designation by the Bureau of Prisons

[X] As notified by the United States Marshall

* * *

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: 3 years.

3 years as to Count(s): 1, 21

Appendix B

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons. While on supervised release, the defendant shall not commit another federal, state, or local crime and shall not illegally possess a controlled substance. The defendant shall not possess a firearm or destructive device. The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the schedule of payments set forth in the financial obligation portion of this Judgment. The defendant shall comply with the following additional conditions:

SEE SEPERATE ORDER AS TO CRIMINAL FORFEITURE.
**To avoid possible jury bais during deliberations, 21 and 25 were redacted by agreement of all parties to reflect the following changes: Count 21 changed to Count 6; Count 25 changed to Count 8;

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;

2) the defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;

3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

Appendix B

4) the defendant shall support his or her dependents and meet other family responsibilities;

5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;

6) the defendant shall notify the probation officer within 72 hours of any change in residence or employment;

7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by physician;

8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed or administered;

9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;

10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;

11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

12) the defendant shall not enter into any agreement to act as an

informer or a special agent of a law enforcement agency without the permission of the court;

13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

FINANCIAL OBLIGATIONS

The defendant shall pay the following total financial penalties in accordance with the schedule of payments set out below:

Count	Assessment	Fine	Restitution
1	$ 50.00	$ .00	$ 16,664.00
21	$ 50.00	$ .00	$ .00
25	$ .00	$ .00	$ .00
Totals:	$ 100.00	$ .00	$ 16,664.00

FINE

The fine includes any costs of incarceration and/or supervision.

[X] The court has determined that the defendant does not have the ability to pay interest in full.

Appendix B

It is ordered that:

[X] The interest requirement is waived.

RESTITUTION

Each restitution payment shall be divided proportionately among the payees named unless specified in the priority payment column below. Restitution shall be paid to the following persons in the following amounts:

Name of Payee	Amount of Restitution	Priority Order of Payment
	$16,664.00	1

SCHEDULE OF PAYMENTS

Payments shall be applied in the following order: (1) assessment; (2) restitution; (3) fine principal; (4) fine costs; (5) interest; (6) penalties.

The total fine and other monetary penalties shall be paid as follows:

[X] in full immediately.

All financial penalty payments are to be made to U.S. Clerk of Court Eastern District of Pennsylvania except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program.

The defendant shall pay interest on any fine of more than $2,500,

unless the fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the above payment options are subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

Unless otherwise ordered by the court, any financial penalty imposed by this order shall be due and payable during the period of incarceration, with any unpaid balance to be a condition of supervised release. Any financial penalties collected while the defendant is incarcerated shall be reported by the Bureau of Prisons to the Clerk of the Court and the probation officer. The probation officer shall notify the United States District Court, the Clerk of the Court, and the United States Attorney's Office of the payment schedule and any modifications to that schedule.

STATEMENT OF REASONS

* * *

[X] The Court adopts the factual findings and guideline application in the presentence report except A seperate order will be entered to reflect the changes made in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level: *25*

Criminal History Category: *I*

Imprisonment Range: *57* to *71* months and __ months consecutive.

Appendix B

Supervised Release Range: *2* to *3* years

Fine Range: $ *10,000.00* to *$100,000.00*

[X] Fine waived or imposed below the guideline range, because of inability to pay. Restitution: $ _____

[X] The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

* * *

APPENDIX C — RELEVANT STATUTES

TITLE 18 U.S.C. § 1341. Frauds and swindles

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more than five years, or both. If the violation affects a financial institution, such person shall be fined not more than $ 1,000,000 or imprisoned not more than 30 years, or both.

TITLE 18, U.S.C. § 1510. Obstruction of criminal investigations

(a) Whoever willfully endeavors by means of bribery to obstruct, delay, or prevent the communication of information relating to a violation of any criminal statute of the United States by any person to a criminal investigator shall be fined under this title, or imprisoned not more than five years, or both.

(b)(1) Whoever, being an officer of a financial institution,

with the intent to obstruct a judicial proceeding, directly or indirectly notifies any other person about the existence or contents of a subpoena for records of that financial institution, or information that has been furnished to the grand jury in response to that subpoena, shall be fined under this title or imprisoned not more than 5 years, or both.

(2) Whoever, being an officer of a financial institution, directly or indirectly notifies —

(A) a customer of that financial institution whose records are sought by a grand jury subpoena; or

(B) any other person named in that subpoena; about the existence or contents of that subpoena or information that has been furnished to the grand jury in response to that subpoena, shall be fined under this title or imprisoned not more than one year, or both.

(3) As used in this subsection —

(A) the term "an officer of a financial institution" means an officer, director, partner, employee, agent, or attorney of or for a financial institution; and

(B) the term "subpoena for records" means a Federal grand jury subpoena for customer records that has been served relating to a violation of, or a conspiracy to violate —

(i) section 215, 656, 657, 1005, 1006, 1007, 1014, 1344, 1956, 1957, or chapter 53 of title 31 [31 USCS §§ 5301 et seq.]; or

(ii) section 1341 or 1343 affecting a financial institution.

(c) As used in this section, the term "criminal investigator" means any individual duly authorized by a department, agency, or armed force of the United States to conduct or engage in investigations of or prosecutions for violations of the criminal laws of the United States.

(d)(1) Whoever—

(A) acting as, or being, an officer, director, agent or employee of a person engaged in the business of insurance whose activities affect interstate commerce, or

(B) is engaged in the business of insurance whose activities affect interstate commerce or is involved (other than as an insured or beneficiary under a policy of insurance) in a transaction relating to the conduct of affairs of such a business, with intent to obstruct a judicial proceeding, directly or indirectly notifies any other person about the existence or contents of a subpoena for records of that person engaged in such business or information that has been furnished to a Federal grand jury in response to that subpoena, shall be fined as provided by this title or imprisoned not more than 5 years, or both.

(2) As used in paragraph (1), the term "subpoena for records" means a Federal grand jury subpoena for records that has been served relating to a violation of, or a conspiracy to violate, section 1033 of this title.

Appendix C

TITLE 18 U.S.C. § 1961. Definitions

As used in this chapter [18 USCS §§ 1961 et seq.] —

(1) "racketeering activity" means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act [21 USCS § 802]), which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891-894 (relating to extortionate credit transactions), section 1029 (relating to fraud and related activity in connection with access devices), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1344 (relating to financial institution fraud), sections 1461-1465 (relating to obscene matter), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments),

section 1955 (relating to the prohibition of illegal gambling businesses), section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire), 2251, 2251A, 2252, and 2258 (relating to sexual exploitation of children), sections 2312 and 2313 (relating to interstate transportation of stolen motor vehicles), sections 2314 and 2315 (relating to interstate transportation of stolen property), section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), sections 2341-2346 (relating to trafficking in contraband cigarettes), sections 2421-24 (relating to white slave traffic), (C) an act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds), (D) any offense involving fraud connected with a case under title 11 (except a case under section 157 of that title), fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act [21 USCS§ 802]), punishable under any law of the United States, or (E) any act which is indictable under the Currency and Foreign Transactions Reporting Act;

(2) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof;

(3) "person" includes any individual or entity capable of holding a legal or beneficial interest in property;

(4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;

(5) "pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;

(6) "unlawful debt" means a debt (A) incurred or contracted in gambling activity which was in violation of the law of the United States, a State or political subdivision thereof, or which is unenforceable under State or Federal law in whole or in part as to principal or interest because of the laws relating to usury, and (B) which was incurred in connection with the business of gambling in violation of the law of the United States, a State or political subdivision thereof, or the business of lending money or a thing of value at a rate usurious under State or Federal law, where the usurious rate is at least twice the enforceable rate;

(7) "racketeering investigator" means any attorney or investigator so designated by the Attorney General and charged with the duty of enforcing or carrying into effect this chapter [18 USCS §§ 1961 et seq.];

(8) "racketeering investigation" means any inquiry conducted by any racketeering investigator for the purpose of ascertaining whether any person has been involved in any violation of this chapter [18 USCS §§ 1961 et seq.] or of any final order, judgment, or decree of any court of the United States, duly entered in any case or proceeding arising under this chapter [18 USCS §§ 1961 et seq.];

(9) "documentary material" includes any book, paper, document, record, recording, or other material; and

(10) "Attorney General" includes the Attorney General of the United States, the Deputy Attorney General of the United States, the Associate Attorney General of the United States, any Assistant Attorney General of the United States, or any employee of the Department of Justice or any employee of any department or agency of the United States so designated by the Attorney General to carry out the powers conferred on the Attorney General by this chapter [18 USCS §§ 1961 et seq.]. Any department or agency so designated may use in investigations authorized by this chapter [18 USCS §§ 1961 et seq.] either the investigative provisions of this chapter [18 USCS §§ 1961 et seq.] or the investigative power of such department or agency otherwise conferred by law.

TITLE 18 U.S.C. § 1962. Prohibited activities

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his

immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

TITLE 18 Pa. C.S.A. § 4108. Commercial bribery and breach of duty to act disinterestedly

(A) CORRUPT EMPLOYEE, AGENT OR FIDUCIARY. — An employee, agent or fiduciary commits a misdemeanor of the second degree when, without the consent of his employer or principal, he solicits, accepts, or agrees to accept any benefit from another person upon agreement or understanding that such benefit will influence his conduct in relation to the affairs of his employer or principal.

Appendix C

(B) CORRUPT DISINTERESTED PERSON. —A person who holds himself out to the public as being engaged in the business of making disinterested selection, appraisal, or criticism of commodities or services commits a misdemeanor of the second degree if he solicits, accepts or agrees to accept any benefit to influence his selection, appraisal or criticism.

(C) SOLICITATION. —A person commits a misdemeanor of the second degree if he confers, or offers or agrees to confer, any benefit the acceptance of which would be criminal under subsections (a) or (b) of this section.